BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

RAYMOND BROWNE	}
Claimant VS.	
HUB OF SYRACUSE, INC.) Docket No. 206,170
Respondent AND	}
BITUMINOUS INSURANCE CO. Insurance Carrier	}

ORDER

Claimant requests review of the preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish dated June 11, 1996.

Issues

The Administrative Law Judge found that claimant failed to provide timely notice of accident to the employer as required by K.S.A. 44-520. Claimant requested review of that finding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds:

The preliminary hearing Order entered by the Administrative Law Judge should be reversed.

The Appeals Board finds that claimant gave timely notice of the alleged August 21, 1995 accident to his supervisor, Garland Smith, on August 24, 1995. This conclusion is supported by claimant's testimony along with the testimony and affidavit of Mike Nichols. Claimant testified that on August 24, 1995 he told Garland Smith that he had hurt his back earlier that week loading ties and Mr. Smith jokingly replied that perhaps the electrical short in a heating gun the workers were using would be good therapy. Mike Nichols' affidavit signed March 28, 1996 corroborates claimant's testimony that claimant told Mr. Smith he had hurt himself loading ties two or three days earlier. Although Mike Nichols' testimony at the preliminary hearing was not as definite and specific as his affidavit, he did testify that he remembers claimant telling Mr. Smith claimant had hurt himself but at the hearing Nichols he could not clearly recall the specifics. The Appeals Board notes that Mr. Nichols was not employed by the respondent when the affidavit was signed but that he had been re-employed by the respondent at the time of the preliminary hearing.

Based upon the entire record, the Appeals Board finds that the greater weight of the evidence establishes that claimant gave timely notice of accident as required by K.S.A. 44-

520 and that this matter should be remanded to the Administrative Law Judge for further proceedings.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish dated June 11, 1996 should be, and hereby is, reversed and that this case is hereby remanded to the Administrative Law Judge to address any remaining issues regarding claimant's preliminary hearing request for benefits. The Appeals Board does not retain jurisdiction over this proceeding.

IT IS SO ORDERED.	
Dated this	day of August 1996.

BOARD MEMBER

c: Gary R. Hathaway, Ulysses, KS Richard A. Boeckman, Great Bend, KS Administrative Law Judge, Garden City, KS Philip S. Harness, Director